IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 28.03.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice J.A.K.SAMPATHKUMAR

Habeas Corpus Petition No.192 of 2006

Selvi ... Petitioner

Vs.

1. The Secretary to Government,
Food, Co-operation and Consumer
Protection Department,
Fort St. George, Chennai-600 009.

2.The District Collector
and District Magistrate,
Trichy District,
Trichy.

3. The Secretary to the Government,
Food and Consumer Protection Department,
Government of India,
New Delhi. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 21.1.2006 in C.M.P.No.1/2006 against the petitioner's husband Perumal son of Rengasamy, aged about 32 years, who is confined at Central Prison, Trichy and set aside the same and direct the respondents to produce the detenu before this Court and set him at liberty.

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For Petitioner : Mr.V.Parthiban

For Respondents: Mr.Abudhukumar Rajarathinam,
Govt. Advocate (Crl. Side)

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O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

The petitioner who is the wife of the detenu by name Perumal, who was detained as a "Black Marketer" under Section 3(2)(a) read with 3(1) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. Heard learned counsel for the petitioner as well as learned Government Advocate for the respondents.

3. At the foremost, learned counsel for the petitioner by drawing our attention to para 8 of the grounds of detention (English version) submitted that inasmuch as the detenu has not filed any bail application and on the date of the detention order he was in Central Prison, Trichy as a remand prisoner, there is no imminent possibility of coming out on bail and this relevant aspect has not been considered by the detaining authority.

4. In order to appreciate the above said contention, it is useful to refer the relevant paragraph, which is as follows.

> "I am aware that Thiru Perumal had been remanded to judicial custody in this case on 18.01.2006 and that he is still Central Prison, Trichy as remand prisoner. No bail application was filed so far. If he let out on bail and he is let to remain at large, he is very likely to continue in such prejudicial activities in future as well. Therefore there is a compelling necessity to pass the order of detention with a view to preventing him from indulging in such prejudicial activities in future."

5. It is clear that though the detaining authority was aware of the fact that the detenu was in Central Prison, Trichy, however, after finding that he has not filed any bail application so far, it is not clear how he arrived at a conclusion viz., that "... If he let out on bail and he is let to remain at large, he is very likely to continue in such prejudicial activities in future as well....". The above conclusion would show the non- application of mind on the part of the detaining authority, which according to us, vitiates the detention order. On this ground, we quash the impugned order of detention.

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5. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

28.03.2006

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government, Food, Co-operation and Consumer Protection Department, Fort St. George, Chennai-600 009.

2.The District Collector and District Magistrate,Trichy District, Trichy.

3. The Secretary to the Government,Food and Consumer Protection Department, Government of India, New Delhi.

4. The Superintendent, Central Prison,Trichy.
(In duplicate for communication to detenu)

5. The Joint Secretary to Government, Public (Law and Order) Fort St. George, Chennai-9.

6. The Public Prosecutor, High Court, Madras.

1 cc to Mr.C.Prakasam, Advocate, SR.15411

ng (co)

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